

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES – GENERAL

Case No. 2:19-cr-00055-MWF-28
5:24-cv-01016-MWF-AJR

Date: November 8, 2024
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Title: United States of America v. Oscar Quintero Jimenez
Oscar Quintero Jimenez v. Warden

DOCKET ENTRY: **ORDER TO SHOW CAUSE WHY MOTIONS CHALLENGING
THE BOP'S CALCULATION OF SENTENCE ARE NOT
MOOT (DKT. 1627)**

PRESENT:

HONORABLE A. JOEL RICHLIN, UNITED STATES MAGISTRATE JUDGE

Claudia Garcia-Marquez
Deputy Clerk

None
Court Reporter/Recorder

None
Tape No.

ATTORNEYS PRESENT FOR
PETITIONER/DEFENDANT:

None Present

ATTORNEYS PRESENT FOR
RESPONDENT/USA:

None Present

PROCEEDINGS: (IN CHAMBERS)

On July 27, 2020, Oscar Quintero Jimenez (“Jimenez”) was sentenced by the Honorable Michael W. Fitzgerald, U.S. District Judge, to a 77-month term of imprisonment in Case No. CR 19-55-MWF-28. (Case No. CR 19-55-MWF-28, Dkts. 853, 854.) At the time of his sentencing, Jimenez was already serving the following state sentences: (1) a 10-year term of imprisonment in Case No. XNOMA071298-01, as filed on August 19, 2022; (2) a 3-year term of imprisonment in Case No. XNOMA071297-01, as filed on January 4, 2018; and (3) a 4-year term of imprisonment in Case No. XNOMA071299-01. (Case No. EDCV 24-1-16-MWF-AJR, Dkt. 18 at 4.) These three state sentences were ordered to run concurrently to one another, and Jimenez began serving his state sentences on January 24, 2018. (*Id.*) The federal judgment issued by Judge Fitzgerald provided that the federal sentence “is to run concurrently to the term imposed in [Case No. XNOMA071299-01].” (Case No. CR 19-55-MWF-28, Dkt. 854.)

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On March 11, 2021, after Jimenez’s federal sentencing, Jimenez was returned to state custody to continue serving out his sentences. (Case No. EDCV 24-1-16-MWF-AJR, Dkt. 18 at 5.) The federal judgment was lodged as a detainer so that Jimenez would be brought into federal custody to begin serving his federal sentence upon completion of his state sentences. (Id. at 5-6.) On July 19, 2023, Jimenez completed his state sentences after serving a total of 6 years and 2 months within the primary jurisdiction of the state. (Id. at 6.) On the same date, Jimenez was released to the exclusive custody of the U.S. Marshals Service to begin serving his federal sentence. (Id.)

The Federal Bureau of Prisons (“BOP”) calculated Jimenez’s federal sentence as running concurrently to his state sentence in Case No. XNOMA071299-01, but did not calculate his federal sentence as running concurrently to either of the other state sentences he was serving (Case Nos. XNOMA071297-01 and XNOMA071298-01). (Id. at 7-8.) Based on this calculation, Jimenez’s projected release date from federal custody was January 6, 2029, factoring in good-conduct time. (Id. at 8.)

On March 18, 2024, Jimenez filed a Post-Conviction Request for Correction of Jail Time Credit (the “Motion for Correction of Credit”) in his federal criminal case, CR 19-55-MWF-28. (Case No. CR 19-55-MWF-28, Dkt. 1573.) The Motion for Correction of Credit appears to challenge the BOP’s calculation of Jimenez’s federal sentence and the fact that the BOP did not calculate the federal sentence as running concurrently to two of the state sentences. (Id. at 1-2.)

On May 9, 2024, Jimenez filed a Motion for a Nunc Pro Tunc (the “Motion for a Nunc Pro Tunc”), initiating a new federal habeas action, EDCV 24-1016-MWF-AJR. (Case No. EDCV 24-1016, Dkt. 1.) The Motion for a Nunc Pro Tunc also appears to challenge the BOP’s calculation of Jimenez’s federal sentence and the fact that the BOP did not calculate the federal sentence as running concurrently to two of the state sentences. (Id. at 2-5.) Because both the Motion for Correction of Credit and the Motion for a Nunc Pro Tunc appeared to seek the same relief, Judge Fitzgerald referred the Motion for Correction of Credit to the undersigned Magistrate Judge. (Case No. CR 19-55-MWF-28, Dkt. 1621.)

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In October of 2024, the BOP sent a letter to Judge Fitzgerald requesting clarification of how the District Court intended for Jimenez’s sentence to run concurrently with the state sentences. (Case No. EDCV 24-1016, Dkt. 16 at 3; Dkt. 18 at 5.¹) On October 31, 2024, Judge Fitzgerald issued an Amended Judgment² clarifying that “[t]his sentence is to run concurrently to the terms imposed in Los Angeles County Superior Court, case numbers XNOMA071297-01, XNOMA071298-01, and XNOMA071299-01. It is the Court’s intention that Defendant be given credit from the date of sentencing, July 27, 2020.” (Case No. CR 19-55-MWF-28, Dkt. 1634 at 1.)

Because Judge Fitzgerald has issued an Amended Judgment, it appears that both the Motion for Correction of Credit and the Motion for a Nunc Pro Tunc are moot. See, e.g., Hanrahan v. Oddo, 2021 WL 323323, at *3 (E.D. Cal. Feb. 1, 2021) (recommending dismissal of motion to correct sentence as moot because of amended judgment), report and recommendation adopted, 2021 WL 1087558 (E.D. Cal. Mar. 22, 2021); United States v. Blazeovich, 2000 WL 36728736, at *2 (S.D. Cal. Aug. 9, 2000) (holding that motion to correct sentence was mooted by amended judgment), aff’d, 38 F. App’x 359 (9th Cir. 2002). Moreover, the Court anticipates that the BOP will recalculate Jimenez’s sentence in light of the Amended Judgment, which would further moot the Motion for Correction of Credit and the Motion for a Nunc Pro Tunc.

Accordingly, Jimenez is **ORDERED TO SHOW CAUSE**, by **November 29, 2024**, why the Motion for Correction of Credit and the Motion for a Nunc Pro Tunc should not both be denied as moot. **Jimenez may satisfy this Order by filing a declaration, signed under penalty of perjury, setting forth any reason why the motions are not moot.** If Jimenez agrees that the motions are moot, he may also file a response asking to voluntarily withdraw the motions.

Jimenez is expressly warned that failure to timely file a response to this Order may result in a recommendation that the motions be denied based on his failure to comply with

¹ Although the letter is listed as Exhibit J to the Declaration of Heather Gandy, Exhibit J does not appear to have been filed. (Case No. EDCV 24-1016, Dkt. 18-1 at 6-7.)

² The Amended Judgment is attached to this Order for Jimenez’s review.

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Court orders and failure to prosecute.

The United States is also directed to file a response by November 29, 2024 confirming that the BOP will recalculate Jimenez's sentence based on the Amended Judgment or that it has already done so.

This Order shall be docketed in both Case No. 2:19-cr-00055-MWF-28 and Case No. 5:24-cv-01016-MWF-AJR. The responses shall also be docketed in both cases.

IT IS SO ORDERED.

Attachments:

Amended Judgment, Case No. CR 19-55-MWF-28, Dkt. 1634.